IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 48 OF 2004

STATE
through Public Prosecutor,
High Court of Bombay at Panaji,
Panaji-Goa. ..... Appellant.

V e r s u s

Dadasaheb Rane,
S/o. Pandurang Rane,
R/o. Vadaval, Goa Dodamarg. ..... Respondent
(Orig. Accused)

Ms. Winnie Coutinho, Public Prosecutor for the State.

Mr. S. K. Kakodker, Senior Advocate with Mr. R. Rivonkar, Advocate for Respondent.

CORAM: N. A. BRITTO, J.

DATE: 8th November, 2006.

JUDGMENT

This is a State's appeal against the acquittal of the accused under Section 379 I.P.C. and Section 3 of the Prevention of Damage to Public Property Act, 1984, by Judgment dated 28.04.2004, of the learned J.M.F.C., Bicholim.

2. The accused is a market inspector of Bicholim Municipal Council, (*BMC*, for short). The case against the accused came to be investigated upon a complaint/F.I.R. filed against him by Rajaram Gaonkar, the Chairperson of the said BMC. The accused was charged and tried by the learned J.M.F.C. with the allegation that on 28.10.2002 at about 18.0o hours, the accused committed theft

of a maruti van ambulance, (vehicle, for short), bearing registration no. GA-01/G-0871, valued at Rs.2,20,000/-, which was parked in the garage of the said BMC.

3. The case of the accused was that he was framed on account of his strained relationship with the said Chairperson.

4. To support the charge against the accused, prosecution had examined nine witnesses.

5. The learned Magistrate proceeded to acquit the accused for several reasons. However, the learned Magistrate has not at all scanned, assessed and appreciated the evidence led by the prosecution in right perspective. On the contrary, the learned Magistrate has only castigated the I.O. for things which he did not do as an easy way to acquit the accused. The learned Magistrate lost sight of the fact that it is always easy to castigate an I.O. for things he has not done. So also, for a superior officer to castigate his sub-ordinate Officer. The learned Magistrate entirely lost sight of the fact that defects in investigations, whether by default or by design, could not be the basis for acquitting the accused and that it was necessary for the learned Magistrate to find out that despite such defects in investigation, a case was made out against the accused or not. By now, there are series of Judgments of the Hon'ble Supreme Court stating that defective investigations by the police cannot be a

ground for acquitting the accused since that would tantamount to playing into the hands of the Investigation Officer if the investigation is designedly defective. (See ***Karnel Singh v. State of M.P. (1995) 5 S.C.C. 518***). After considering a number of Judgments of the Apex Court, a Division Bench of this Court in the case of ***Kishore Shinde v. State of Maharashtra (2006 Cri. L. J. 2618)***, held that defective investigations cannot deter the Court from convicting the accused, if the Court finds that dehors the defect, the accused can still be convicted on the basis of evidence on record. The Apex Court in the case of ***Himachal Pradesh v. Lekh Raj & Sons (AIR 1999 S.C. 3916)***, has held that defective investigations cannot be made basis for acquitting the accused if despite such defects and failures of the investigation, a case is made out against all the accused or any of them. The Supreme Court has further stated thus :

> "The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt of innocence of the accused arraigned. In arriving at a conclusion about the truth, the Courts are required to adopt rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper-technicalities or figment of imagination should not be allowed to divest the Court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstances keeping in view the peculiar facts of each case, the social position of the

> victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The Courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be an Utopian thought but has to be considered as part and parcel of the human civilization and the realities of life. The Courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and the mankind."

6. The learned Magistrate has dubbed every witness examined by the prosecution as an interested witness without trying to find out as to what interest they had for the prosecution or against the accused. In case they were interested, then it was the duty of the learned Magistrate to have closely scrutinised their evidence and then only accepted or rejected the same. Evidence of witnesses cannot be rejected by giving labels to them. An interested witness is a witness who derives some benefit from the litigation in a Civil case or in seeing an

accused punished in a criminal case. As regards interested witnesses, the Apex Court in the case of ***Israr v. State of U.P. (2004 (10) SCALE 237)***, referring to ***Dalip Singh & Ors. v. The State of Punjab (AIR 1953 S.C. 364)***, has reiterated the position thus:

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness had cause, such as enmity against the accused, to wish to implicate him falsely."

Each case of course has got to be limited to and governed by its own facts.

7. The learned Magistrate has gone to the extent of dubbing even Appa Painter/P.w.6, as interested witness. One fails to understand the interest he would have in seeing the accused punished when he was only a part time employee and that too miles away of Belgaum Cantonment Board. When theft had taken place of Municipal property, witnesses like Rajaram Gaonkar/P.w.1, Galgu/P.w.2, Govind/P.w.3 and Shyam/P.w.4, could have been only natural and probable witnesses in the case and on that score alone, their evidence could not have been discarded. The learned Magistrate has also acquitted the accused because certain witnesses like Sanjay R. Palyekar and Prakash Kurne, were not examined without trying to find out whether they were at all material witnesses to unfold the case of the prosecution. The learned Magistrate has also acquitted

the accused because, the complaint was not filed by the Chief Officer and this aspect will be dealt with, a little later.

8. As regards appellate powers, learned Senior Counsel has placed reliance on ***Ayodya Singh v. State of Bihar & Ors. (2005 (9) S.C.C. 584).*** It is well to remember that the paramount consideration of the Court is to ensure that justice is done and miscarriage of justice is prevented. Acquittal of the guilty and conviction of the innocent are both to be avoided. The appellate powers of this Court against an Order of acquittal are no different from the powers against an order of conviction. This Court has full power to review at large the evidence upon which the Order of acquittal is founded and to reach the conclusion that upon that evidence, the Order of acquittal should be reversed. It should only bear in mind that initial presumption of innocence is fortified by the acquittal and not weakened and if two conclusions are possible based on the evidence produced, then the Court would decline to interfere but in case the view taken by the trial Court is unreasonable, then it is the bounden duty of this Court to set the acquittal aside or when the judgment is manifestly erroneous. The observations in the decision cited on behalf of the accused by the learned Senior Counsel in the case of ***Ayodya Singh v. State of Bihar & Ors. (***Supra***)***, are no different from that well settled position. In this case, the Apex Court held that if on the same evidence two views are reasonably possible where the Court below takes a view in favour of the accused, the Appellate Court will not set aside the Order of acquittal unless it finds the finding to be perverse, highly

unreasonable, based on no evidence on record or made in ignorance of relevant evidence on record or for other such reasons.

9. There was no serious dispute that the vehicle in question was purchased under MPLAD Scheme (Member of Parliament Local Area Development Scheme), in the name of the Collector and was entrusted to the BMC. It was not the case of the accused at any time, that the said vehicle belonged to him or that it was not in possession of the BMC. The learned Magistrate has rightly noted that the offence of theft was one of removal of moveable property from the possession of another person without his consent and with a dishonest intention. Rajaram Gaonkar/P.w.1, might have stated that the theft was of the ambulance of Bicholim Municipal Council. However, the fact remains that in terms of the said Scheme, the vehicle in question was to remain as Government property and was to be returned no sooner it became unserviceable. The learned Magistrate had rightly observed that the evidence of deputy Collector/P.w.9 had revealed that the vehicle was in the name of the Collector and was in possession of the BMC and, inspite of the said observation having been made, the learned Magistrate allowed herself to be confused and then held that there was no documentary evidence on record to show that the said vehicle belonged to BMC and further went to the extent of observing that the documents did not pertain to the vehicle in question as there was no mention of either the registration number, the engine number or the chasis number of the vehicle. The prosecution had produced the Delivery Memorandum dated

16.06.1998, (Exhibit P.w.1/C), which showed the engine number, the chasis number, the registration number as well as the ignition key number of the vehicle in question. The registration certificate dated 12.06.1998, shows the chasis number, the engine number as well as the registration number of the vehicle. The prosecution had also produced two Orders issued by the Collector, the first dated 24.03.1998(Exhibit P.w.1/B) and second one dated 22.04.1998(Exhibit P.w.1/D), which show the administrative approval given to purchase certain vehicles under the said Scheme, as recommended by Member of Parliament Shri Ravi S. Naik including one for BMC. Initially, it appears that the Collector was summoned but subsequently it is the Deputy Collector Shri Fernandes/P.w.9, who was examined in place of the Collector and who had identified the signatures of the then Collector on the said Orders. Shri Fernandes/P.w.9 had categorically stated that the vehicle in question was in possession of the BMC, a fact which was not even denied on behalf of the accused. It is submitted on behalf of the accused that the prosecution did not produce any delivery letter from the Collector to the BMC. In my view, such letter was not at all necessary to be produced. The evidence of the Chairperson Shri Gaonkar/P.w.1 and the Deputy Collector Shri Fernandes/P.w.9, was more than sufficient to conclude that the said vehicle which was purchased under the said Scheme, was in possession of the BMC and it was stolen whilst it was in their possession. The evidence referred to herein before was more than sufficient to conclude that the vehicle was purchased under the said Scheme, was registered in the name of the Collector and was allotted to BMC for use and

from whose possession it was stolen.

10. The evidence of Labourer-driver Govind/P.w.3 shows that he drove the vehicle last on 22.10.2002, to take a patient to GMC and brought it back and thereafter he was given a break till 07.11.2002. The vehicle was used last on 27.10.2002 and one does not know who had used the same but that was of no particular significance to the case of prosecution. The evidence of Shri Gaonkar/P.w.1 and Shyam/P.w.4 shows that the vehicle was seen on 28.10.2002 at 5.45 p.m. and disappeared before 6.15 p.m. before the said watchman resumed his duty. There were four drivers of BMC, besides Govind/P.w.3. The keys of the vehicle were kept in the vehicle itself. The vehicle had a log book and a register and the said register was in charge of the Supervisor by name Sanjay Palyekar under whose charge the vehicle used to remain till 5.45 p.m. (being office timings). Their evidence further shows that the garage of BMC is surrounded by compound wall, having a gate to it and one of the keys of the gate remains with the watchman and the other with the Supervisor Shri Palyekar and it is the said Shri Palyekar, who keeps a note of the incoming and outgoing vehicles from the garage and whenever a vehicle is required to be taken out, the said Supervisor had to be informed during day time i.e. from 8.00 a.m. to 5.45 p.m. and the watchman during night time. The vehicle was available for use for 24 hours and whenever the vehicle was to be removed out of the garage, the watchman or the Supervisor had to make an entry on the register. As per the watchman Shri Shyam/P.w.4, the vehicle did not disappear when he was on duty

and as already stated the vehicle disappeared between 5.45 p.m. and 6.15 p.m. on 28.10.2002 when neither the Supervisor nor the watchman were present. The said Supervisor Shri Palyekar's statement was not recorded by the Investigating Officer nor he was examined in the trial. Shri Gaonkar/P.w.1 stated that the register and the log book were shown by him to the I.O. and when the latter was questioned about it, Shri Walke/P.w.8 admitted that he had not interrogated the Supervisor of BMC to find out about the details of the vehicle. A submission is made, on behalf of the accused, by the learned Senior Counsel, that Sanjay Palyekar, the said supervisor, was a material witness for the prosecution and, therefore, adverse inference has got to be drawn against the prosecution for his non examination. Likewise, it has also been submitted on behalf of the accused, that the log book and register were not produced. In my view, no adverse inference can be drawn against the prosecution for non-examination of the said Sanjay Palekar, as well as for non-attachment of the log book or register of the vehicle. It was stated by Shri Gaonkar/P.w.1, that sometimes, the accused used to take his wife in the said vehicle to the Goa Medical College. It was pointed out to Shri Gaonkar/P.w.1, in cross examination that such a statement he had not made in his complaint to the police and he explained by stating that he had not mentioned it in his complaint because there was no need for him to have so stated. The said statement of Gaonkar/P.w.1, that the accused used to take his wife in the said vehicle, might have been at the most an improvement in his version but on that count alone, his said statement could not have been disbelieved. It is not unusual for some of the officials to misuse Government

vehicles. The examination of the said Palyekar, might have been relevant in case theft was committed by a person who was not connected with BMC and the facts stated by the aforesaid witnesses show that in all probability, that the vehicle was taken out after the employees left the office and before the arrival of watchman on duty on that day. The production of the log book would be of no relevance as far as this case is concerned. A person taking the vehicle unauthorizedly does not make entries on the log book or register. Non-examination of the said Sanjay Palyekar casts no shadow of doubt on the case of the prosecution, which is otherwise well established with other overwhelming evidence on record. The said Sanjay Palyekar was certainly not a material witness and he would not throw any more light on the disappearance of the vehicle than what is stated by the watchman. The submission that the driver Parab/P.w.3 and the Watchman Shyam/P.w.4, have deposed only to please their superior namely the Chairman Shri Gaonkar/P.w.1, cannot be accepted and there is nothing in the evidence of Parab/P.w.3 and Shyam/P.w.4, even to remotely suggest that they have given false evidence to please the Chairperson Shri Gaonkar/P.w.1.

11. That takes me to consider the first submission of the learned Senior Counsel, on behalf of the accused, which has been probably made by taking a thread from the observation of the trial Court that the complaint was not filed by the Chief Officer of B.M.C., who admittedly is its administrative head. Learned Senior Counsel has placed reliance on Section 281(1)(b) of the Goa

Municipalities Act, 1968, (*Act*, for short) and has submitted that the police could not have investigated the case against the accused unless a complaint was filed by the Chief Officer of the B.M.C. Learned Counsel has submitted that the Chairman had no power to lodge the said complaint and that had to be lodged only by the Chief Officer of BMC and that the general principle that criminal law could be set in notion by anyone, would not be applicable in this case in the light of the aforesaid provision. The learned Senior Counsel further submitted that the Act could always modify the said general principle and the words "any offence" appearing in clause (b) of sub-section 1 of Section 281 of the Act, would show that the complaint could not have been entertained by the police for investigation unless it had come from a person other then the Chief Officer. Shri Kakodkar has further submitted that a Chairperson is kept out of the purview of Section 281 of the Act because he may be politically motivated.

On the other hand, the learned Public Prosecutor, has submitted that Section 281 (1)(b)of the Act, is merely an enabling provision and the said provision creates no bar for filing of the complaint. In this regard, the learned Public Prosecutor has placed reliance on ***A. R. Antulay v. Ramdas Sriniwas Nayak & anr. (AIR 1984 S.C. 718).*** In this case, the Constitution Bench of the Hon'ble Supreme Court has stated that *it is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. Locus standi of the complainant is a concept foreign to criminal*

jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant by necessary implication the general principle gets excluded by such statutory provision. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence save and except specific statutory exception.

12. In the case of ***Misrilal Mangilal Maternity & Child Welfare Centre Construction Committee, Hyderabad v. K. Rajmallu & Ors. (1978 Cri. L. J. 1360)***, the Andhra Pradesh High Court observed that excepting cases attracting Sections 195 to 199 Cr.P.C., any person having knowledge of the commission of any offence, could file a complaint.

13. Section 281 in Chapter XXI of the Act deals with provisions as respects institution, compounding, etc. of criminal actions. It reads as follows:-

> "(1) Subject to the general control of the Council, the Chief Officer may take proceedings against any person who is charged with -
>
> (a) any offence against this Act or any rules of bye-laws made thereunder;

(b) any offence which affects or is likely to affect any property or interest of the Council or the due administration of this Act; or

(c) committing any nuisance whatever :

Provided that the Chief Officer shall not, except with the previous approval of the Council, direct a prosecution or order proceedings to be taken for the punishment of any person offending against the provisions of the following sections or sub-sections, namely :-

(i) sub-section (7) of Section 171 read with sub-sections (8) and (9) of section 184;
(ii) sub-section (6) of section 178;
(iii) sub-section (5) of section 243.

(2) No prosecution for any offence under this Act or the rules or bye-laws made thereunder shall be instituted except within six months next after the date of the commission of the offence, or if such date is not known or the offence is a continuing one within six months after the commission or discovery of such offence.

(3) Any prosecution under this Act or the rules or bye-laws made thereunder may, save as therein otherwise provided, be instituted before any Magistrate; and every fine or

penalty imposed under or by virtue of this Act or any rule or bye-law, and any compensation, expenses, charges or damages for the recovery of which no special provision is otherwise made in this Act, may be recovered on application to any Magistrate, by the distress and sale of any movable property within the limits of his jurisdiction belonging to the person from whom the money is claimable.

(4)Notwithstanding anything contained in Section 257 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), no Magistrate shall permit withdrawal of a complaint under that section in respect of an offence punishable under this Act or the rules and bye-laws made thereunder, unless the Magistrate is satisfied that although the complaint was made in good faith it was based on incorrect facts or insufficient information.

(5)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), all offences punishable under this Act or the rules or bye-laws made thereunder may be compounded by the Chief Officer, but only with the permission of the Court before which any prosecution for such offence is pending, or when the accused has been committed for trial or

when he has been convicted and an appeal is pending, with the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6)The Chief Officer shall before compounding any offence under the last preceding sub-section obtain the approval of the Standing Committee, and the Standing Committee shall not accord its approval unless the accused pays by way of composition of the offence such sum as may be determined by it. Such sum shall not be less than one-fourth of the maximum amount of fine prescribed for the offence, and if the fine prescribed therefor is unlimited shall not be less than two hundred and fifty rupees.

(7)The composition of an offence under this section shall have the effect of an acquittal of the accused with which the offence has been compounded.

(8)The expenses of all prosecutions or proceedings shall be paid out of the municipal fund."

14. It will not be out of context to refer to Section 74 of the Act, which deals with powers and duties of Chief Officer and particularly clause (f) of sub-section 1 thereof, which provides that the Chief Officer shall report to the Chairperson and the Committee concerned all cases of fraud, embezzlement,

theft or loss of municipal money and property. (emphasis supplied). Likewise Section 59 of the Act, provides for the functions of the Chairman and clause (d) of sub-section 1 thereof provides that, subject to the provisions of the Act and of any rules and bye-laws framed thereunder, a Chairperson of a Council shall exercise supervision and control over the acts and proceedings of all officers and servants of the Council in matters of executive administration and in matter concerning the accounts and records of the Council.

15. In my view, the expression "may take proceedings against any person, who is charged with any offence, which affects or which is likely to affect any property or interest of the Council or the due administration of this Act", appearing in Section 281(1)(b) cannot be taken to be by way of modification of the general principle of the criminal jurisprudence that anyone can set the criminal law into motion. Whenever a statute provides for a bar, it so expressly provides. The word "may" clearly suggests that it is only an enabling provision. A conjoint reading of the aforesaid three sections of the Act does not show that a complaint of theft of a Municipal property could be either filed to the police or to the Court only by the Chief Officer. As observed by the Constitution Bench (supra), in the absence of a specific provision made in the statute indicating that the offences will have to be investigated, inquired into, tried or otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with accordance to the Criminal Procedure Code, which is a parent statute and which provides for

investigation, inquiring into and trial or cases by criminal Courts by various designations. The provision of Section 281 (1) (b) of the Act, cannot be taken to be an implied prohibition on the powers and the Chairperson, to lodge a complaint of theft of municipal property and who has been saddled with the exercise of supervision and control over the acts and proceedings of all Officers and servants of the Council, in matters of executive administration and in matters concerning with records of the Council. The fact that complaint came to be filed by the Chairperson and not by the Chief Officer, could not have been taken against the case of the prosecution. A proactive Chairman was bound to complain to the police without waiting for the Chief Officer to act, when the property entrusted for the use of the Municipal Council, was stolen.

16. Next, it is submitted on behalf of the accused, by the learned Senior Counsel that the first information report in this case has zero value, a submission which cannot at all be accepted in the light of the evidence produced. Shri Gaonkar/P.w.1 has categorically stated that Shri Shyam Gaonkar/P.w.4, had informed him at his residence about the missing of the vehicle. Shyam Gaonkar/P.w.4 though initially referred to the date as 27.10.2002, as the date when he came to know about the missing vehicle, later in his deposition he clarified himself and stated that on 28.10.2002 when he came back to duty, he found the vehicle was missing and that he was under the impression that the vehicle must have gone out with the patient and there was no question of inquiring about the said vehicle with any other person as no one was

present. He has confirmed that on 29.10.2002 he personally went to the house of the Complainant Shri Gaonkar and informed him about the missing of the vehicle. Gaonkar/P.w.1 stated that he lodged his complaint on 29.10.2002 at about 5.30 p.m. This complaint could be none other than the missing report which ASI Walke/P.w.8 produced as exhibit P.w.8/A and explained in his evidence that the said missing report was received by some other Officer by name Navnath Naik and he had received it after registering the complaint given by Shri Gaonkar/P.w.1. It is true that the signature on the missing report Exh. P.w.8/A was not got identified through Gaonkar/P.w.1 but that omission cannot be taken to arrive at the conclusion that the missing report P.w.8/A was fabricated subsequently. There was no need for such fabrication. Gaonkar/P.w.1 categorically stated that he lodged his complaint on 30.10.2002 and this is sufficiently corroborated by ASI Walke/P.w.8, when he stated that the complaint lodged by Gaonkar/P.w.1 was registered by him at 7.40 p.m. on 30.10.2002. The accused was arrested, as stated by ASI Walke/P.w.8, between 8.00 to 9.00 p.m. as Shri Gaonkar/P.w.1 had suspected the accused of being involved in the said theft of the vehicle. There is no dispute that the accused was released on bail subsequently on 02.11.2002, and, although initially Shri Gaonkar/P.w.1 stated that the accused had come to the office on 01.11.2002, he corrected himself and stated that the accused had come to the office on 05.11.2002 as the accused was on leave from 28.10.2002 to 04.11.2002 and on the said slight discrepancy, there was no room to doubt the testimony of Shri Gaonkar/P.w.1. The scene of offence panchanama, which was conducted as a formality and

termed as a nil panchanama, was conducted after the offence was registered at 07.40 p.m. and i.e. between 07.55 and 8.15 p.m. in the presence of Galgu Venkataya/P.w.2, who happened to be the driver of the Chairperson Shri Gaonkar/P.w.1. In other words, the facts stated clearly show that first a missing report was lodged on 29.10.2002 and the FIR was lodged on 30.12.2002 which, as we shall see little later, has been amply corroborated by Shri Gaonkar/P.w.1. Therefore, it cannot be said that the FIR was recorded after the investigations began and indeed, it was recorded soon after Shri Gaonkar/P.w.1 came to suspect that it is the accused who was involved in the theft of the said vehicle. It is the duty of the Court to separate the grain from the chaff and where chaff can be separated from grain, it is still open to the Court to convict an accused. Falsus in uno falsus in omnibus is a principle we do not follow and even in case where major part of evidence of a witness is found to be insufficient and in cases where residue is sufficient to prove guilt of an accused, a conviction can be maintained (See ***Israr v. State of U.P. (2004 (10) Scale 237***). It is well settled law that if the statement has been recorded by the police as contemplated by Section 154 of the Code, that statement cannot be said to be recorded in the course of the investigation of the case and, therefore, would not be hit by the provisions of Section 162 of the Code. Such a statement can certainly be used for the purpose of corroboration or if necessary to prove contradictions. The F.I.R Exh. P.w.1/A has been fully corroborated by Complainant Shri Gaonkar/P.w.1 and it has to be given full value.

17. As stated by Shri Gaonkar/P.w.1, he had suspicion that it is the accused who had committed the theft of the said vehicle, and he suspected the accused because he was on leave. That suspicion presumably got stronger when he learnt that the accused had gone out of Goa, from the father of the accused. It is submitted that there was no particular reason for Shri Gaonkar/P.w.1, to suspect the accused. It may be noted that suspicion is never based on reason and it is only subsequent facts which can prove the suspicion as right or wrong. In this case, the suspicion of Shri Gaonkar/P.w.1, did come to be true ultimately. It is on the basis of the suspicion that the accused came to be arrested by ASI Walke/P.w.8 between 8.00 p.m. to 9.00 p.m. on 30.10.2002.

18. The accused upon interrogation, as stated by ASI Walke/P.w.8, confessed in the presence of panch witnesses having committed the theft and stated that he was ready to show the place where he had kept the vehicle and, accordingly they went to Belgaum, on 30.10.2002 at 10.35 p.m. and reached there at 3.00 a.m., where the accused led them to a place known as Patil Galli to a garage named as 'Gundu Garage', which was found closed and they halted near the said garage and in the morning at about 9.30 a.m., one person came to the garage and the accused identified the said person, as the person to whom he had handed over the vehicle and the said person disclosed his name as Shankar Sutar/P.w.5 and the said Shankar Sutar/P.w.5 told that the vehicle was handed over to Appa Painter/P.w.6 at Ujwalnagar. ASI Walke/P.w.8 stated that in the garage of Appa Painter/P.w.6, there were three vehicles and one vehicle was

identified by Shri Gaonkar/P.w.1, as the vehicle involved in the case belonging to BMC and some parts of which were removed for the purpose of painting such as bumper, glasses, headlight and that he himself checked the chasis number, the engine number and the key number and all the numbers tallied with the documents issued by M/s. Sai Service (Exh. P.w.1/B). He further stated that the said Appa Painter/P.w.6 was asked to re-fix the parts of the vehicle and it was found that the number plate was GA-01-N-0099, was different from the actual number plate of the vehicle GA-01/G-0871 and that thereafter the accused further disclosed, at the said garage of Appa Painter/P.w.6, that the accused had kept other parts of the vehicle at Krantinagar, Belgaum, and that had led them to Krantinagar, where they recovered stepney, stretcher, the actual number plate of the vehicle and one tin of paint remover at the instance of the accused and at Krantinagar, the accused stated that the other parts of the vehicle were thrown at Tillari Ghat and the accused led them to Tillari Ghat, where they recovered the stretcher/M.O.13 and the partition board/M.O.12, which was thrown in the valley having a depth of about 20 metres, which were brought up by police personnel. Walke/P.w.8 further stated that the panchanama commenced at Bicholim Police Station and also concluded there though at one stage, Shri Walke/P.w.8 stated that the second part of the panchanama was concluded at Tillari Ghat; In cross examination he stated that he was not aware as to whether the panchanama was required to be conducted at each and every place where the items were recovered, which he had not done in the present case. In further cross examination, he stated that in the panchanama exhibit P.w.7/A, he

had not stated that it was the accused that had led them to the places at Ujwalnagar, Krantinagar and other places, though in fact, this statement is contrary to what is recorded in the panchanama. He also admitted that he had not taken the signature of the accused on any of the papers prepared by him and had also not given the copy of the panchanama to the accused. In further cross examination, he also stated that after writing the panchanama Exh. P.w.7/A, he had read the contents but he had not noticed the mistake due to oversight, the mistake that at one place, the vehicle was referred to as Maruti car, which he came to know whilst under cross examination itself.

19. Amonkar/P.w.7 stated that he was waiting for the bus and at that time, ASI Walke/P.w.8 called him to the Police Station to act as a pancha at about 9.45 p.m. There he saw the accused sitting and he and Rajendra Kadkade were introduced to the accused, who disclosed his name and when the accused was asked as to what he wanted to state, the accused stated that he had stolen the ambulance Maruti van belonging to BMC, having no. GA 01/G 0871 and that he would show the said vehicle and thereafter signed the panchanama and proceeded in a Tata Sumo jeep to Belgaum, along with the said Rajendra Kadkade , Satish Gaonkar and the jeep was driven by Sagar Salkar. He stated that they reached Belgaum at 3.00 a.m. and upon reaching there, the accused took them to Patil Galli, in the garage styled as 'Gundu Garage', and since it was night time, the garage was closed and they took a halt there and at about 9.30 p.m., on the next day, a person came to the garage and the accused told them

that he is the owner, and on being questioned, he gave his name as Shankar Sutar and informed that the accused had given the Maruti Van for painting to Appa Painter/P.w.6 and they along with Shankar Sutar/P.w.5, proceeded to Ganghinagar (Ujwalnagar) in the garage of Appa Painter/P.w.6 and there they saw three boys painting the vehicle and upon checking the engine number, chasis number, the police found that the vehicle belonged to BMC and the same was identified by the Complainant Shri Gaonkar/P.w.1. He stated that the glasses, bumper and lights of the vehicle were removed for the purpose of painting, and, in their presence, the said Appa Painter/P.w.6, had re-fixed the said parts which were removed for the purpose of painting. He stated that when they saw the said vehicle, other parts such as stretcher box, stepney, tool box were missing as stated by the said Complainant Shri Gaonkar/P.w.1. He stated that the number plates which were brought by Appa Painter/P.w6 were bearing no. GA 01/N 0099 and when the accused was asked about the other parts of the vehicle, the accused had stated that he had kept all the other parts near the house of Prakash Kurne at Krantinagar and there they found the stepney, stretcher box, jack and a paint remover but the partition and other materials were not found. He stated that all these parts were attached under a panchanama and when the accused was asked about the stretcher, the accused stated that the said stretcher was thrown at Tillari Ghat and upon reaching there, the accused showed the place where he had thrown the stretcher and the said place was in a deep valley and after the place was shown, two police constables got down, removed the said stretcher and the partition. In cross examination he stated that he knew the

Complainant Shri Gaonkar/P.w.1 since his childhood and so also the other pancha Rajendra Kadkade. He denied the suggestion that the said Complainant and Rajendra Kadkade were his childhood friends. He stated that the said Rajendra Kadkade was the Councillor of the BMC and had become Vice President for the last two to three months and he and the said Rajendra Kadkade were residing in the same ward. In further cross examination he stated that at Sutar Garage, there was no vehicle at all and no panchanama was drawn there. He admitted that Sutar had told that the vehicle was handed over to Appa Painter/P.w.6 and that the accused had not told them about the vehicle having been lying with Appa Painter/P.w.6. In further cross examination, he also stated that the parts produced by Appa Painter were of the van and that in the panchanama exhibit P.w.7/A, it was mentioned that the parts were of the van. When the panchanama was shown to him, where at one place, the van was referred to Maruti car, he stated that it must have been written by mistake and they came to know about the said mistake on that day only. He too admitted that the panchanama was not signed at each and every place where they had gone along with the accused and it was not written at every place they visited along with the accused.

20. Shankar Sutar/P.w.5 stated that he does repairing work of vehicles at Patil Galli, Belgaum, and towards the end of October 2002, at 9.15 hours, the accused came to him and requested him to do the painting work of a vehicle of white colour, which was a Maruti van and he did not recollect the full number

of the vehicle but the last two digits were 99. He stated that he called one painter by name Appa Painter/P.w.6 to his garage on telephone and sent the accused with his vehicle with Appa Painter/P.w.6 and it was agreed between the said Appa Painter/P.w.6 and the accused that the accused would pay Rs.5,000/- and Rs.1,000/- were paid as advance to Appa Painter/P.w.6. He stated that at the relevant time, except for the driver's seat, there were no other parts in the vehicle and there were scratches on the doors on the driver's side and cleaner's side door and there were scratches below the glass and on the next day, he came to open the garage, he saw the two policemen and the accused were waiting for him to open the garage and he was told by the police that the Maruti van which was brought by the accused was required to be taken back by the police to Goa. He stated that the said vehicle was given for painting to the garage by Appa Painter/P.w.6 and he accompanied the accused and the police to the garage of Appa Painter/P.w.6, along with two to three persons and in the said garage, the police and the other persons who had accompanied the police, identified the said vehicle. He stated that he would not be in a position to identify the said vehicle. In cross examination he stated that he had come to the Court with four friends including Appa Painter/P.w.6 and Ramesh painter, who came to assist them to reach to Goa. He stated that he had come for the first time to Goa and that the said persons were sitting in the open Court. In further cross examination, he stated that he did not touch the said vehicle and he could not tell the date or the day of the month, when the said vehicle was brought to his garage by the accused. He further stated that Appa Painter/P.w.6 does not have telephone

facility but he rang him up on a neighboring telephone No. 2455160. He further stated that he did not know the full name of the said Appa Painter/P.w.6. He also stated that he, at the relevant time, had not seen the letters or the words written on the whole body of the said vehicle except the number which he referred to. He has also stated that he had not suspected the theft of the vehicle when it was brought to him by the accused. In further cross examination, he stated that he did not know whether Ramesh Painter who had accompanied them, is the Councillor of the Belgaum Cantonment Board and was the friend of the Councilor of BMC, namely Shri Gaonkar/P.w.1. He denied the suggestions that he was tutored by Shri Gaonkar/P.w.1 and the said Ramesh Painter to depose in favour of the said Gaonkar. He also denied the suggestion that the accused had never come to his garage at any time. Although it is contended on behalf of the accused that Shankar Sutar/P.w.5, has not identified the vehicle before the Court which was brought by the accused, the fact remains that Shankar Sutar/P.w.5 pointed out the vehicle brought by the accused in the garage of Appa Painter/P.w.6, where it was identified by Gaonkar/P.w.1 and ASI Walke/P.w.8 with reference to the engine number, chasis number and key number. Another fact proved through him is that the accused had brought the vehicle in scratched condition. There is no reason why Shankar Sutar/P.w.5 should be disbelieved and his evidence appears to be convincing and trustworthy.

21. Appa Painter/P.w.6, in his turn, has stated that at the end of

October, 2002, he received a call from Shankar Sutar/P.w.5 in Mahalaxmi Garage stating that one vehicle was required to be painted and that he should come and see the vehicle and he went to the garage of Shankar Sutar/P.w.5 and there was a Maruti van of white colour. The said vehicle was having no. GA 01 and the last digits were 99 and the accused told him that the said vehicle was to be painted and thereafter asked him about the charges of painting and the accused agreed the vehicle to be painted at Rs.5,000/- and gave him Rs.1,000/- as advance. He stated that there were scratches on the entire body, and thereafter he took the said vehicle to his garage at Ujwalnagar and the accused had told him to give the vehicle back immediately but he had told the accused that it would take about three to four days and on the subsequent day when the police came, he had completed the work of removing the bumper and washed the vehicle but had not started the actual work of painting. He stated that the police had asked him to re-fix all the parts which were removed for the purpose of painting and he re-fixed and handed over the said vehicle to the Bicholim Police, in his garage. In cross examination, he had stated that he told the police that Shankar was accompanying the Bicholim police and the accused on the next day, and his attention was drawn to his statement recorded by the police wherein he had not made any such mention. In further cross examination, he stated that out of fear, he could not remember what was done by the police at the time of conducting the panchanama and recording his statement and therefore he could tell who had written down the panchanama and his statement. He stated that the panchanama was handwritten and his signature was not obtained on his

statement. He further stated that he had not seen any paper or how the police were recording the panchanama because he was nervous out of the fear of the police. He stated that Shankar Sutar/P.w.5 was known to him from his childhood. As regards the said Ramesh Painter, he stated that he was earlier appointed as a Councillor of the Cantonment Board but he denied the suggestion that he was the Councillor till date. He admitted that the said Ramesh Painter was present in the Court on the date he was examined (29.11.2003). He admitted that he had come along with four persons and although he admitted that all the four persons were not having any case in Bicholim Court, he denied the suggestion that the said four persons, the Compalinant and Ramesh Painter, were friends. He denied the suggestion that the vehicle was not brought to his garage at any point of time and that he had not seen the said vehicle earlier.

22. Shri Gaonkar/P.w.1, who had accompanied the accused and police party had confirmed that the vehicle and other accessories were recovered at the instance of the accused.

23. The testimony of the above witnesses have been rejected by the trial Court on the ground that there are major contradictions and omissions in their evidence even without taking care to find out what were the contradictions and how they affected the credibility of the evidence given by them. The only omission which was not even a contradiction proved in the evidence of Shri Gaonkar/P.w.1, is that he had not mentioned in his complaint, exhibit P.w.7/A,

that the accused used to take his wife in the said vehicle and even then the said omission was explained by him stating that he had found that there was no need for him to make the said statement in his complaint. There was no other omission or contradiction proved by the defence in his evidence. An effort was made by the defence to suggest that he was in inimical terms with the accused because the accused had removed the encroachments in the market area in ward no. 5, which was in charge of the accused and in which some shopkeepers had shops, shopkeepers who were residing in ward nos. 7 and 8 from which the said Shri Gaonkar/P.w.1 and his wife were elected as Councillors. Gaonkar/P.w.1 had fairly admitted that many of the shopkeepers had complained to him as regards removal of encroachments by the accused but he had categorically denied that he was against the accused because the accused had not listened to him when he had requested the accused to stop the work of the removal of the said encroachments. In case the encroachments were being removed by the accused as market inspector, then naturally, the persons who were affected by the said removal, would normally approach the Chairman, namely Shri Gaonkar/P.w.1, with their grievance but Shri Gaonkar/P.w.1 has categorically denied that the shopkeepers had requested him to stop the removal of the said encroachments or he had requested the accused to stop the same. It was also stated by the accused in his statement under Section 313 of the Code that his family were the supporters of the Congress Party and the said Complainant was the supporter of BJP, but, I fail to understand as to what that had to do with the Complainant, who was a Chairman of BMC belonging to the BJP Party at

Bicholim, while the accused was from Dodamarg. There was no evidence on that aspect as well except the ipse dixit of the accused. In my view, there is absolutely nothing in the evidence of the Complainant which would show that his version is motivated and therefore unreliable. The only omissions proved in the evidence of Shankar Sutar/P.w.5 are that he had not stated in his statement that the said vehicle would be taken to Goa and the said three persons who had accompanied the police had identified the vehicle. The last statement is of a fact which took place in the presence of the police and therefore it was not expected of Shankar Sutar/P.w.5 to have mentioned about the same, in his statement to the police. The said omissions in no way affected the vital part of his evidence that the accused had brought the vehicle to him and he in turn had contacted Appa Painter/P.w.6, who had taken the same from his garage for the purpose of painting. The identification of the vehicle before the Court, by Shankar Sutar/P.w.5, would not be of much significance because Shankar Sutar/P.w.5, had taken the accused and the police party to the garage of Appa Painter/P.w.6, where the vehicle was found which was identified by Shri Walke/P.w.8, and by Shri Shankar Sutar/P.w.5, as the vehicle, brought by the accused. Likewise, the only omission proved in the evidence of Appa Painter/P.w.6 was that he had not stated in his statement that Shankar Sutar/P.w.5, was present at the time of conducting of the panchanama and recording his statement, which was of no consequence at all. It is now well settled that the Courts are not required to attach undue importance to minor discrepancies appearing in the evidence of witnesses and unless the omissions or contradictions affect the core of the

evidence of a particular witness, they are not required to be given any importance and are to be overlooked. As held by the Apex Court time and again, unless the discrepancies are so vital, they cannot affect the creditability of the evidence of the witnesses. There is bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of material dimension, the same should not be used to jettison the evidence in its entirety. Corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. It is also submitted that there is mystery in the name of Appa Painter/P.w.6. He gave his name as Appa Painter @ J. Fakira Metri, but signed as Vijay Metri. His statement was recorded as Vijay, son of Fakira Metri @ Appa Painter. His examination before the trial Court was not objected to as of a witness who was not cited in the charge sheet. No suggestion was put to him in his cross examination that he was not Appa Painter @ J. Fakira Metri, when he deposed before the Court as P.w.6. Defence cannot be allowed to take undue advantage of trivialities such as this and now be heard to say that P.w.6 is an impostor. It may be stated that in cross examination, Appa Painter/P.w.6 had stated that he had not seen any paper or how the police had recorded the panchanama and in what manner because he was nervous out of fear of the police. It is submitted that he is a wrong doer and that is how he was nervous. This submission also cannot be accepted because it is not unknown

that sometimes people do get nervous at the presence of the police and moreso in this case when Appa Painter/P.w.6 came to know that the vehicle he had undertaken to paint was involved on the wrong side of law. There is absolutely nothing in his evidence to make him unreliable.

24. As far as P.w.7/Dattaguru is concerned, he is an independent witness and only because he knew the Complainant from his childhood or the said Councillor Rajan Kadkade, from his childhood, there is no ground to reject his evidence. They are all from Bicholim and were bound to know one another from their childhood. He has specifically denied that the said Complainant and Rajan Kadkade were his childhood friends. He also denied the suggestion that he was a stock witness of Bicholim Police Station.

25. From the evidence of the aforesaid witnesses, the prosecution has clearly established that after the accused was arrested and interrogated, the accused disclosed that he was ready to show where he had kept the vehicle, involved in the theft, and after the first part of the panchanama was concluded, PSI Shetgaonkar along with the I.O. Shri Walke/P.w.8, the accused and others went to Belgaum and then the accused led them to the garage of Shankar Sutar/P.w.5 at Patil Galli, at Belgaum, where they reached during night time and had to wait till morning for the arrival of Shankar Sutar/P.w.5 and when the latter informed them that the vehicle was handed over for painting to Appa Painter/P.w.6, Shankar Sutar/P.w.5, led them to the garage of Appa

Painter/P.w.6 at Ujwalnagar, where the vehicle was found and which was identified both by Shri Walke/P.w.8 as well as by the Complainant Shri Rajaram Gaonkar/P.w.1 and which was in the process of being painted. There, the parts which were removed for the purpose of painting by Appa Painter/P.w.6 were fitted back, including the number plates GA01/N-0099. There the accused stated that the stepney/spare tyre, stretcher box along with stretcher, Jack, were kept by him at Krantinagar, and accordingly, they proceeded towards Krantinagar near the house of one Prakash S. Kurne, where the accused showed some accessories such as a stepney/spare tyre/M.O. 2, Jack with lever/M.O.4, stretcher box/M.O.3, side mirror/M.O.6, wiper/M.O.7 and the two number plates bearing no. GA-01/G-0871/M.O.8, one seat/M.O.9, two back rests of the seat/M.O.10, one tin of paint remover/M.O.15 and packet of tools/M.O.11, which were attached under the panchanama. A grievance was made that the statement of Prakash S. Kurne, ought to have been recorded and he ought to have been examined in the trial. The entire evidence produced by the prosecution does not in any way indicate that the said Prakash S. Kurne was at all in any way concerned with the said articles kept by the accused near his house and, therefore, the fact that his statement was not recorded or that he was not examined by the prosecution was of no consequence to the case of the prosecution. There the accused further informed the I.O./Police that he had thrown the stretcher/M.O.13 and partition board/M.O.12 at Tillari Ghat, and on reaching there, the accused pointed out the place where he had thrown the said partition board/M.O.12 and the stretcher/M.O.13 and the same were also

recovered at the instance of the accused. Although the vehicle/M.O.1 and other articles like M.O.3 to M.O. 10, were recovered at the garage of Appa Painter/P.w.6, on being taken there by Shankar Sutar/P.w.5, the fact remains that the other articles namely the stepney/spare tyre/M.O.2, the stretcher box/M.O.3, the seat/M.O.9, etc., (i.e. M.O.3 to M.O.11), were recovered at the instance of the accused directly on the basis of information given by him and the said articles have been identified as the accessories of the vehicle by Complainant/Rajaram Gaonkar/P.w.1. The evidence of ASI Walke/P.w.8 as regards recovery of the car/M.O.1 and other accessories, inspires confidence. It is not in every case that the evidence of a Police Officer is to be rejected as unworthy of credit. His evidence is corroborated by an independent panch witness namely Amonkar/P.w.7 and further corroborated by Shankar Sutar/P.w.5 and Appa Painter/P.w.6, who were also independent witnesses examined by the prosecution and there was no reason to doubt the evidence given by them in addition to the evidence of the chair person Shri Gaonkar/P.w.1. The evidence of the aforesaid witnesses is consistent, convincing, plausible and unequivocal and shows that the car/M.O.1 and other accessories were recovered on the basis of the information given by the accused from the places stated herein before. Their evidence could not have been rejected in the manner sought to be done by the learned Magistrate. Shri Kakodker, the learned Senior Counsel on behalf of the accused submits that the vehicle/M.O.1 was not discovered at the instance of the accused but at the instance of Shankar Sutar/P.w.5, and therefore, it cannot be said that the

recovery is one made under Section 27 of the Indian Evidence Act and in support of this submission, learned Senior Counsel has placed reliance on the case of ***Pandurang Kalu Patil & anr. v. State of Maharashtra (2002 (2) S.C.C. 490)***. The learned Senior Counsel has further submitted that even if the said recovery is said to have been proved, that piece of evidence would be insufficient to convict the accused and in this context, learned Senior Counsel has placed reliance on the case of ***Bhupan v. State of M.P. (2002 Cri. L. J. 1474)***, wherein the Apex Court did not rely upon a dying declaration to base a conviction and having found that what was left was only a circumstance of recovery of a sword at the instance of the accused, on the facts and circumstances of the case, found that it would not permit them to base the conviction under Section 302 I.P.C.

26. On the other hand, the learned Public Prosecutor has submitted that the recovery of the vehicle was done at the instance of the accused and in support of the said submission, learned Public Prosecutor has placed reliance on the case of ***Prasad Ramakant Khade v. State of Maharashtra (1999 (8) S.C.C. 493)***. Learned Public Prosecutor has also submitted in the alternative that in case the recovery made is held not to be under Section 27 of the Evidence Act, then the evidence produced could be considered as admissible as conduct of the accused under Section 8 of the Evidence Act irrespective of whether any statement by the accused contemporaneously that or antecedent to such conduct, falls within the purview of Section 27 of the Evidence Act. In this context, she

has placed reliance on the case of ***Prakash Chand v. State (Delhi Admn.) (AIR 1979 S.C. 400)***.

27. In the case of ***Pandurang Patil v. State of Maharashtra*** (supra), the Apex Court referred to the case of ***Pulukuri Kottaya & Ors. v. Emperor (AIR (34) 1947 PC 67)***, wherein the Privy Council had stated that,

> "Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house' does not lead to discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant",

and held that the aforesaid legal proposition was considered and tested by the Supreme Court time and again , and the ratio laid therein had become locus classicus and even after the lapse of half a century after its pronouncement has not eroded its forensic worth. The Supreme Court then proceeded to state that the essence of Section 27 is that, it was enacted as a proviso to the two preceding sections which imposed a complete ban on the admissibility of any confession made by an accused either to the police or to anyone while the accused is in police custody and the object of making a provision in Section 27

was to permit a certain portion of the statement made by an accused to a police officer admissible in evidence whether or not such statement is confessional. Nonetheless, the ban against admissibility would stand lifted if the statement distinctly related to a discovery of fact. A fact can be discovered by the police (I.O.) pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. Recovery, or even production of object by itself need not necessarily result in discovery of a fact.

28. In State of ***Maharashtra v. Damu Gopinath (AIR 2000 S.C. 1691),*** the Apex Court stated that the basic idea embedded in Section 27 of Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. Referring to ***Pulukuri Kottayya v. Emperor*** (supra), the Apex Court observed that the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. The Apex Court further observed that the

information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered." But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. In the case of ***Mohd. Afzal v. State (2005 AIR SCW 4148)***, the Supreme Court has looked into another aspect of Section 27 of the Evidence Act i.e. whether pointing a material object by the accused furnishing the information is a necessary concomitant of Section 27 and answered the same in the negative and further stated that though in most of the cases the person who makes the disclosure himself leads the Police Officer to the place where an object is concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information furnished by the accused, the Investigating Officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the Investigating Officer will be discovering a fact viz., the concealment of an incriminating article and the knowledge of the accused furnishing the information about it. In other words, where the information furnished by the person in custody is verified by the Police Officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the immediate and proximate cause of discovery. If the Police Officer chooses not to take the informant accused to the

spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence.

29. As far as the facts of the case are concerned, the accused took the police party including the Investigation Officer that he would show the vehicle to the garage of Shankar Sutar/P.w.5 and the latter took them to the garage of Appa Painter/P.w.6, where the vehicle was found. In my view, it could not be said that the information given by the accused was only indirectly or remotely related to the fact discovered. In fact the discovery of the vehicle was on the basis of the information given by the accused who took them to the person to whom he had first taken the vehicle and the latter then took them to the place where the vehicle was kept for the purpose of painting and, therefore, the fact discovered was unmistakably connected to the information given by the accused. In a similar situation, in the case of ***Prasad Ramakant Khade v. State of Maharashtra (1999 (8) S.C.C. 49)***, the accused had led the I.O. and the panch witnesses to one Pravin Gawand and the accused asked the said Pravin Gawand, when he opened the door to hand over the articles to the I.O. and accordingly, he handed over the same to the I.O. It was contended that the articles were not seized at the instance of the accused and the contention was rejected by the Apex Court, speaking through three learned Judges stating that the contention that the articles were not seized at the instance of the accused could not be accepted.

30. Therefore, it can be safely concluded that it is not only the accessories/spare parts of the vehicle which were attached at the instance of the accused but also the vehicle/M.O.1 itself. It therefore follows that it is the accused who had stolen the said vehicle and taken to Belgaum for the purpose of painting the same.

31. It was next contended that a copy of the panchanama Exh. P.w.7/A, was not given to the accused nor his signature was taken. It was also contended that no seizure list as required by sub-section (5) of Section 100 Cr.P.C. was prepared. In my view, none of these submissions can be accepted. As can be seen from Section 100 Cr.P.C., the said Section applies when a search is made of a closed place pursuant to a warrant and not otherwise. In the case of ***State of Rajasthan v. Teja Ram & Ors. (1999 Cri. L. J. 2588)***, the signature of the accused was taken on the seizure memos and it was contended, contrary to what has been contended in this case, that the said action of the I.O. was illegal and had vitiated the seizure and this was in the context of Section 162 of the Cr.P.C. and the Apex Court observed that the prohibition contained in sub-section (1) of Section 162, was not applicable to proceedings made as per Section 27 of the Evidence Act and held that the Investigating Officer was not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by Section 27 of the Evidence Act. But, if any signature has been obtained by an I.O.,

there is nothing wrong or illegal about it. In the case at hand, only because a copy of the panchanama was not furnished to the accused, the same is insufficient to vitiate the evidence given in Court in relation to the said panchanama by the Investigating Officer and the concerned panch witness. Another aspect which the learned Magistrate indirectly held against the prosecution is that the panchanama was not made at different places and when this aspect was brought to the notice of Walke/P.w.8, he had stated that he was not aware that the panchanama was required to be conducted at each and every place where the items were recovered and this he had not done in the present case. In this case, the I.O. started from Bicholim Police Station after the accused stated that he would show the vehicle, subject matter of theft, and therefore, they proceeded first to the garage of Shankar Sutar/P.w.5 as per the direction of the accused and from there, to the garage of Appa Painter/P.w.6. The panchanama exhibit P.w.7/A as well as the supporting evidence of Walke/P.w.8 and Shri Amonkar/P.w.7, shows that there was continuity in the panchanama from the time they left the Police Station till the time they returned to the Police Station and everything that transpired in between was faithfully recorded in the said panchanama. Concluding the panchanama at every place and starting it again from place to place would have been only an empty formality. The panchanama had complete continuity from the time they left the Police Station until they returned at the Police Station and a faithful record of what transpired was recorded in the panchanama. Therefore the fact that the panchanama was not completed at each and every place where the articles were

recovered and seized, could not be held against the prosecution.

32. Next, it was submitted on behalf of the accused, that the Investigation Officer had failed to investigate as to from where the number plates GA-01/N-0099 were brought by the accused. It is again submitted that the said number plates are not before this Court, the same having been ordered to be destroyed by the Judgment of Acquittal dated 28.04.2004 and subsequently by throwing them in the nullah as can be seen from the Order dated 21.08.2004 of the learned Magistrate. It is contended that by the destruction of the said number plates, evidence before the Appellate Court has been tampered with and the accused has been deprived of drawing inferences by looking at the said number plates. In my view, it was not at all necessary for the purpose of this case or for hearing of this appeal, for the I.O. to have found out as to whom the said number plates namely GA-01/N-0099 belonged to, though this might have furnished additional evidence against the accused. There is more than sufficient evidence to connect the accused in this case for the theft of the vehicle and lack of investigations in that direction does not affect the case of the prosecution which has been proved beyond reasonable doubt. Destruction of the said number plates, as ordered by the Trail Court and the same not being available now before this Court, does not amount to tampering with any evidence. Even if the said number plates have now been destroyed, in no manner it affects the case which has been proved against the accused.

33. Lastly, it is submitted that the investigations carried out by ASI Walke/P.w.8 are without jurisdiction. It is contended that the Bicholim Police had no power or jurisdiction to investigate the alleged offence at Belgaum in the State of Karnataka outside the limits of Bicholim Police Station and within the jurisdiction of Belgaum Police Station and of J.M.F.C., Belgaum and the investigations so conducted are all null and void and consequently the chargesheet filed by the Bicholim police is without jurisdiction, null and void and liable to be quashed. Learned Senior Counsel has urged that the charge sheet filed against the accused therefore should be quashed and has placed reliance on ***Popular Muthiah v. State (2006 (7) S.C.C. 296)***, to show that while exercising appellate power, the High Court can exercise its revisional jurisdiction or inherent jurisdiction under Section 482 Cr.P.C. not only when an application is made but also suo motu.

34. I do not think it is necessary to dwell much into this submission of learned Senior Counsel. Chapter XII beginning with Section 154 of Cr.P.C. deals with information to the police and their powers to investigate and to my mind it places no restriction on the powers of the Police to investigate beyond the jurisdiction of their Police Station whether in the same district or another, irrespective of the State in which such Police Station is situated. The only limitation is as regards searches and in such a case when search takes place beyond the jurisdiction of the Police Station that sub section (4) of Section 166 of Cr.P.C. has got to be complied. Firstly, there is absolutely no cross

examination to find out whether sub section (4) of Section 166 Cr.P.C. was complied with assuming it was applicable. Secondly, the provisions of Section 165 and 166 would be inapplicable to the case at hand because the attachment and seizure was not made pursuant to Sections 165 or 166 of Cr.P.C. but pursuant to Section 27 of the Evidence Act, and therefore, the Investigation Officer was free to proceed into the jurisdiction of another Police Station and seize the property as shown by the accused. No effort was also made in the cross examination of the prosecution witnesses to find out whether any of the Police Officers of Belgaum Police Station had accompanied PSI Walke/P.w.8 when they proceeded in the jurisdiction of that Police Station. A search under Sections 165 or 166 and an attachment and seizure under Section 27 of the Evidence Act, stand on different footings in as much as a recovery under Section 27 of the Evidence Act, could be proved by the solitary testimony of the Investigating Officer himself while that may not be possible in case of search and seizure under Sections 165 or 166 of the Cr.P.C. That apart, suffice it to observe, that any irregularity or even an illegality during investigations cannot be treated as a ground to reject the prosecution case, as stated by the Apex Court, in the case of ***Leela Ram v. State of Haryana (AIR 1999 S.C. 3717)***. The last submission of learned Senior Counsel belatedly made for quashing the chargesheet also deserves to be rejected.

35. From the evidence discussed herein above, it is very clear that the accused had committed theft of the vehicle and had caused damage to it possibly

with a view to cover up its identification. Prosecution had proved its case beyond reasonable doubt against the accused. The learned Magistrate was not at all justified in acquitting the accused. The learned Magistrate failed to perform its duty, as is enjoined on it by law. The accused, therefore, deserves and is hereby convicted both under Section 379 I.P.C. as well as Section 3 of the P.D.P.P. Act, 1984.

36. The accused as well as the learned Advocate appearing on behalf of the accused have been heard on the point of sentence. On behalf of the accused, it is submitted that the accused is a married man and he is having children and therefore substantive sentence of imprisonment may not be imposed on him, which will affect his wife and children.

37. Admittedly, the accused was a public servant working for Bicholim Municipal Council as a market inspector. The accused was certainly not a needy person to have committed the theft of the said vehicle. A sentence to be imposed should always have a deterrent effect. Sentence, it is said, is the most public place of the criminal justice system and it has got to be always proportionate to the crime committed by the accused. Proportion between crime and punishment is a goal respected in principle. Courts are required to ensure that whenever an accused is found guilty, he does not escape the clutches of law very lightly. Sentencing discretion has to be exercised considering the facts of each case. A theft by a needy person is understandable, though not condonable

but theft by a greedy person certainly deserves to be punished sternly. Considering the facts, in my view, the following sentence shall meet the ends of justice:-

The accused is hereby sentenced under Section 379 I.P.C., to undergo RI for one month and to pay a fine of Rs.5,000/-, in default to undergo three months SI. The accused is also sentenced to undergo RI of one month under Section 3 of the P.D.P.P. Act 1984, and to pay a fine of Rs.5,000/-, in default to undergo three months SI. The sentence of imprisonment imposed herein to run concurrently. In case the fine is realized, a sum of Rs.5,000/- shall be paid to Bicholim Municipal Council by way of compensation. The bail bonds of the accused are hereby cancelled. The accused to surrender before the learned trial Court within a period of two weeks, to undergo the sentence.

N. A. BRITTO, J.

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